IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.157 OF 2005

Mr.T.D.Joseph .. Appellant
(Org. Plaintiff)

vs.

Bhandari Co-op. Bank Ltd. .. Respondent.
(Org. Defendant)

Ravindra Bhat, Advocate for the Appellant.

Mr.R.V.Vengurlekar, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 28th February, 2005.

P.C. :

1. Admit. Respondent waives service. Taken up for hearing forthwith.

2. The Appellant is the original Plaintiff. The challenge in this Appeal from Order is to the order dated 27.12.2004 by which the learned Trial Judge has disposed of the prayer made by the Appellant plaintiff for grant of ad-interim relief. The only greviance made by the Appellant

in this appeal is regarding the direction given by the learned trial Judge to the Appellant Plaintiff to implead the name of the landlord of the suit property as party Defendant No.2.

3. The learned Counsel appearing for the Appellant submitted that such a direction could not have been given by the learned Judge at the time of considering the prayer for grant of ad-interim relief. The learned Counsel appearing for the Respondent has invited my attention to the averments made in the plaint in which reference is made to the dispute between the Appellant and his Landlord. He, therefore, submitted that the learned Judge was justified in giving the direction.

4. I have considered the rival submissions. The learned Judge was dealing with prayer of ad-interim injunction made by the appellant/plaintiff. There was no scope to make the adjudication whether the suit was not maintainable on account of non joinder of necessary parties. Without making any such

adjudication, the learned Trial Judge could not have directed the Appellant to implead the landlord as a party Defendant No.2. Therefore, in my view, the said direction is unsustainable and deserves to be quashed.

5. It is made clear that the Respondent can always raise the contention that the landlord of the suit premises is necessary and/or proper party at an appropriate stage. As and when the contention is raised, the learned trial Judge is bound to consider the same.

6. Hence, I pass the following order:

(i) The following portion of the impugned order is quashed and set aside " Plaintiff is directed to add the name of the landlord of the suit property as a party Defendant No.2". Rest of the impugned order is confirmed.

(ii) The learned Judge will decide the Notice of Motion on its own merits. It will be open for the Respondents to raise the contention that the

Landlord of the premises in dispute is either a necessary or a proper party to the suit.

(iii) Appeal is partly allowed in the above terms with no orders as to cost.

(iv) Parties to act on the authenticated copy of this order.

(A.S.Oka, J.)